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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 RICHARD HOSE (deceased);
12 EVE STALLWORTH on her own
13 behalf, and on behalf of all others
14 similarly situated,

15 Plaintiffs,

16 v.

17 WASHINGTON INVENTORY
18 SERVICE, INC. d/b/a WIS
19 INTERNATIONAL, a California
20 Corporation; RETAIL SERVICES
21 WIS, INC., a Delaware
22 Corporation; and CENTRE LANE
23 PARTNERS, LLC, a New York
24 Limited Liability Company,

25 Defendants.

Case No.: 14-cv-2869-WQH-AGS

ORDER

26 HAYES, Judge:

27 The matters before the Court are 1) the Motion for Service Awards (ECF No. 296);
28 2) the Motion for Attorneys' Fees (ECF No. 297); and 3) the Motion for Final Approval of
Collective Action Settlement (ECF No. 298) filed by Plaintiff Eve Stallworth; and 4) the
Joint Motion to Include Opt-ins Who Submit Untimely Claims Prior to Final Approval in
the First Distribution of Settlement Funds filed by the parties (ECF No. 299).

I. PROCEDURAL BACKGROUND

On December 4, 2014, Plaintiff Richard Hose, on behalf of himself and all others similarly situated, filed a Collective Action Complaint against Defendants Washington Inventory Service, Inc. d/b/a WIS International (“WIS”) and WIS Holdings Corp. (“WIS Holdings”) under the Fair Labor Standards Act (“FLSA”). (ECF No. 1). This wage and hour action arises from Plaintiff Hose’s former employment as an Inventory Associate for Defendant WIS, which employs “thousands” of people as “auditors, inventory associates, and/or other functionally equivalent hourly positions” to travel to retail stores and count inventory in those stores. (ECF No. 82 at ¶ 2).

On March 19, 2015, the Court issued an Order granting Defendant WIS’s Motion to Dismiss the Complaint. (ECF No. 13). On May 29, 2015, Plaintiff Hose filed a First Amended Complaint (“FAC”). (ECF No. 26). On June 9, 2015, Plaintiff Hose dismissed the claims against Defendant WIS Holdings. (ECF No. 27). On June 15, 2015, Defendant WIS filed an Answer to the FAC. (ECF No. 29). The parties engaged in fact discovery. On March 14, 2016, Plaintiff Hose filed a Second Amended Complaint (“SAC”). (ECF No. 82). On March 30, 2016, Defendant WIS filed an Answer to the SAC. (ECF No. 86).

On June 7, 2016, the Court issued an Order granting Plaintiff Hose’s Motion for Conditional Certification under the FLSA. (ECF No. 94). On June 14, 2016, the Court issued an Order approving the class definition and notice of collective action. (ECF No. 97). The Court conditionally certified a class of “[a]ll individuals currently or formerly employed by WIS as an Inventory Associate in the United States at any time from three years before the mailing of the notice of collective action who have not released all alleged claims that they still may pursue under the Fair Labor Standards Act during the applicable time period of this case.” (ECF Nos. 95 at 2; 97). On June 23, 2016, the Court issued an Order approving the consent to join form, approving the procedures for distributing notice to the collective, and appointing Heffler Claims Group (“Heffler”) as the notice administrator. (ECF No. 104).

1 On August 30, 2016, the Court issued an order granting Defendant's Motion to
2 Compel Arbitration as to thirteen Opt-in Plaintiffs, directing that their claims proceed to
3 arbitration and staying those claims in favor of arbitration. (ECF No. 119).

4 In June 2017, Retail Services WIS, Inc. ("RSW"), a company backed by private
5 equity firm Centre Lane Partners, LLC ("CLP"), acquired Defendant WIS as part of a
6 foreclosure sale of the WIS company.

7 On July 19, 2017, the Court issued an Order granting in part and denying in part
8 Defendant's Motion for Summary Judgment and Motions to Compel Arbitration as to
9 13,830 Opt-in Plaintiffs. (ECF No. 189). The Court denied the Motion for Summary
10 Judgment as to one Opt-in Plaintiff and granted the Motion as to 464 other Opt-in
11 Plaintiffs. The Court denied the Motions to Compel Arbitration as to any Opt-in Plaintiffs
12 who signed certain dispute resolution agreements and granted the Motions as to all other
13 Opt-in Plaintiffs identified in the Motions, staying those claims in favor of arbitration.

14 On August 7, 2017, Plaintiff Hose filed a Third Amended Complaint ("TAC"),
15 adding RSW and CLP as Defendants. (ECF No. 194). The TAC is the operative complaint
16 in this matter. In the TAC, Plaintiff Hose asserts three claims for FLSA violations against
17 all Defendants: (1) failure to pay minimum wages, (2) failure to pay overtime wages, and
18 (3) failure to compensate for all hours worked; and three common law claims against all
19 Defendants: (1) breach of contract, (2) breach of covenant of good faith and fair dealing,
20 and (3) unjust enrichment; and one common law claim for successor liability against
21 Defendants RSW and CLP.

22 On August 14, 2017, Defendant WIS filed an Answer to the TAC. (ECF No. 196).
23 On May 30, 2018, Defendants RSW and CLP filed Answers to the TAC. (ECF Nos. 210,
24 211).

25 On July 2, 2018, Defendant WIS filed for Chapter 11 bankruptcy. On July 3, 2018,
26 a Notice of Automatic Stay pursuant to 11 U.S.C. § 362 was filed as to debtor Defendant
27 WIS. (ECF No. 214).
28

1 On December 18, 2018, the Court issued an Order granting in part and denying in
2 part Plaintiff Hose's Motion for Declaratory Relief, ordering Defendant RSW to
3 participate in the ongoing arbitration with the Opt-in Plaintiffs and Defendant WIS
4 pursuant to the WIS arbitration agreements. (ECF No. 251).

5 On April 23, 2019, Defendants RSW and CLP filed a Motion for Summary
6 Judgment and a Motion for Decertification. (ECF Nos. 271, 273). On May 28, 2019, the
7 parties notified the Court that they had reached a settlement. (ECF No. 280). On October
8 30, 2019, Plaintiff Hose filed a Motion for Preliminary Approval of Collective Action
9 Settlement. (ECF No. 290). On December 12, 2019, the Court issued an Order granting
10 the Motion for Preliminary Approval. (ECF No. 292). The Court preliminarily approved
11 the Settlement (Ex. 1, Decl. of Joshua G. Konecky ("Konecky Decl."), ECF No. 290-3 at
12 2-48) and the Notice of Collective Action Settlement ("Notice") (*id.* at 87-96); appointed
13 Heffler as the settlement administrator; and set a schedule for dissemination of the Notice,
14 submission of requests for exclusion and objections, and briefing on the motions for final
15 approval, attorneys' fees and costs, and service awards. The Court further denied
16 Defendants RSW and CLP's Motion for Summary Judgment and Motion for
17 Decertification as moot.

18 On February 18, 2020, the Court issued an Order granting the parties' Joint Motion
19 to Substitute Eve Stallworth as the Named Plaintiff for Recently Deceased Named
20 Plaintiff Richard Hose. (ECF No. 295).

21 On March 5, 2020, Plaintiff Stallworth filed a Motion for Service Awards (ECF No.
22 296) and a Motion for Attorneys' Fees (ECF No. 297). On May 18, 2020, Plaintiff
23 Stallworth filed a Motion for Final Approval of Collective Action Settlement. (ECF No.
24 298). On June 10, 2020, the parties filed a Joint Motion to Include Opt-Ins Who Submit
25 Untimely Claims Prior to Final Approval in the First Distribution of Settlement Funds.
26 (ECF No. 299). On June 12, 2020, Plaintiff Stallworth filed a Supplemental Declaration.
27 (ECF No. 300).

Defendants did not file any opposition to the Motion for Service Awards, Motion for Attorneys' Fees, or Motion for Final Approval of Collective Action Settlement.

On June 26, 2020, the Court held a final approval hearing. (ECF No. 302). No member of the collective appeared.

On June 26, 2020, the parties filed a Stipulation and Joint Proposal Regarding Language for Inclusion of Late Claimants in First Distribution of Settlement. (ECF No. 303).

II. TERMS OF THE PROPOSED SETTLEMENT

The Settlement at issue in this case is a global settlement that resolves 1) the FLSA claims made by Opt-in Plaintiffs in this case ("*Hose v. WIS*"); and 2) claims for civil penalties under the Private Attorneys General Act in *Arispe v. Washington Inventory Service, et al.*, RIC 1801185, currently pending in the Superior Court for the State of California, County of Riverside ("*Arispe v. WIS*"). This Court is asked to approve the terms of the Settlement pertaining to *Hose v. WIS*, and the superior court is asked to approve the terms of the Settlement pertaining to *Arispe v. WIS*.

a. The Class

The Settlement resolves the FLSA claims of the "Hose Plaintiffs:" "any inventory associate employed by [WIS] on or after July 22, 2013, and who timely submitted a valid opt-in consent form on or before September 19, 2016, in accordance with the notice procedures set forth in the District Court's Order of June 23, 2016 [Dkt. 104] in [*Hose v. WIS*]." (Settlement, Ex. A, Konecky Decl., ECF No. 290-3 at 11).

b. Class Benefits

The total amount of the global settlement of *Hose v. WIS* and *Arispe v. WIS* is \$7,015,516.59—the sum of the "Gross Settlement Amount" of \$6,615,500 plus an additional \$400,016.59 in "Rabbi Trust Reserve," sponsored by Defendant WIS. (*Id.* at 9). The total amount available for settlement of *Hose v. WIS* is \$6,565,516 (the "Hose Total Settlement Amount"). The Hose Total Settlement Amount includes \$6,165,500 of the Gross Settlement Amount allocated to *Hose v. WIS* plus \$400,016.59 in Rabbi Trust

1 Reserve. (*Id.* at 11). The \$400,016.59 from Rabbi Trust Reserve is included in the Hose
 2 Total Settlement Amount on the condition that Defendant RSW remains solvent in June
 3 2021, the deadline for RSW to deposit the \$400,016.59 into the Qualified Settlement Fund.
 4 Following deductions to the Hose Total Settlement Amount for the Hose Class
 5 Representative Service Award, the Hose Attorneys' Fees and Costs Award, and Settlement
 6 Administration Costs allocated to *Hose v. WIS*, the remaining "Hose Net Settlement
 7 Amount" will be distributed to the Hose Plaintiffs.

8 Each "Hose Participating Plaintiff" will receive an "Individual Settlement Payment"
 9 from the Hose Net Settlement Amount based on the individual's proportionate share of
 10 "Adjusted Settlement Workweeks." (*Id.* at 16). Hose Participating Plaintiffs are defined in
 11 the Settlement as "Hose Plaintiffs who (a) do not submit timely and valid Requests for
 12 Exclusion on or before [April 7, 2020]; and (b) submit a timely and valid claim form on or
 13 before [April 7, 2020]." (*Id.* at 11). To determine the amount of each Individual Settlement
 14 Payment, Heffler first determines the number of actual weeks that the Hose Participating
 15 Plaintiff worked as an Inventory Associate for WIS from July 22, 2013, through December
 16 12, 2019, the date this Court preliminarily approved the proposed settlement. (*Id.* at 11,
 17 16). Heffler then calculates the number of Adjusted Settlement Workweeks by adjusting
 18 the number of actual workweeks upwards in the following two cases: (a) each actual
 19 workweek will be multiplied by three for a Hose Participating Plaintiff who was not
 20 compelled to arbitration and who either appeared for deposition or submitted substantive
 21 interrogatory responses in the case; and (b) each actual workweek will be multiplied by
 22 two for a Hose Participating Plaintiff who was compelled to arbitration and who
 23 substantially completed the written survey circulated via the website maintained by
 24 Plaintiffs' counsel. (16-17 ¶ 10). Heffler then divides the Hose Net Settlement Amount by
 25 the total number of Adjusted Settlement Workweeks, resulting in the "Hose Workweek
 26 Value." (*Id.* at 17). The Individual Settlement Payment for each Hose Participating Plaintiff
 27 is calculated by multiplying the Hose Workweek Value by the Hose Participating
 28

1 Plaintiff's total number of Adjusted Settlement Workweeks. Each Individual Settlement
2 Payment will be reduced by appropriate tax withholdings or deductions.

3 Hose Participating Plaintiffs will receive their Individual Settlement Payments in
4 two distributions: "(1) one payment estimated to occur in or about the Third Quarter of
5 2020; and (2) a second payment estimated to occur in or about December of 2021." (ECF
6 No. 298-1 at 8; *see* Settlement, Ex. A, Konecky Decl., ECF No. 290-3 at 32-33). The parties
7 have stipulated, and seek approval from the Court, to include "108 opt-in plaintiffs who
8 have submitted late claims as of June 19, 2020, as well as any additional opt-in plaintiffs
9 who submit claim forms prior to two weeks before the date of the first distribution . . . as
10 [Hose] Participating Plaintiffs to receive their proportionate share of the Hose Individual
11 Settlement Payments from the first distribution" (ECF No. 303 at 2). All Hose
12 Plaintiffs will receive a \$50 "Hose Minimum Settlement Payment" as part of the second
13 distribution, in addition to any Individual Settlement Payment. (Settlement, Ex. A,
14 Konecky Decl., ECF No. 290-3 at 18, 34). After the second distribution, and after Heffler
15 processes any late claims, remaining funds will be distributed to *cy pres* recipient Legal
16 Aid at Work. (*Id.* at 34-35).

17 There are 14,676 Hose Plaintiffs. (*See* Decl. of Mark Rapazzini ("Rapazzini Decl."),
18 ECF No. 298-2 ¶ 3). As of June 10, 2020, 5,977 Hose Plaintiffs submitted timely claim
19 forms. (Supp. Decl. of Mark Rapazzini ("Rapazzini Supp. Decl."), ECF No. 300 ¶¶ 7-8).
20 108 Hose Plaintiffs submitted claim forms postmarked after the April 7, 2020, deadline.
21 (*See* ECF No. 303 at 2).

22 **c. Class Notice**

23 Mark Rapazzini, the Senior Director at Heffler, states in his Declaration that "[o]n
24 January 9, 2020, Heffler received the class list from Defendants' counsel which included
25 the following information from Defendants' records: each Hose Plaintiff's full name; most
26 recent mailing address and telephone number; Social Security number; e-mail address
27 (where available); and number of Workweeks as a Hose Plaintiff." (Rapazzini Decl., ECF
28 No. 298-2 ¶ 3). "Heffler ran the class list through the Post Office's National Change of

1 Address database (NCOA) to obtain updated addresses.” (*Id.* ¶ 4). “On February 7, 2020,
 2 Heffler printed and mailed the Court approved Notice and Claim Form to all Hose
 3 Plaintiffs.” (*Id.*). “Heffler also emailed 14,203 Notice packages to those Hose class
 4 members for whom Heffler was provided an email address.” (*Id.* ¶ 5).

5 As of June 10, 2020, Heffler “received 46 Notices returned by the USPS with a
 6 forwarding address. Heffler re-mailed all 46 Notices to the updated addresses provided by
 7 the USPS.” (Rapazzini Supp. Decl., ECF No. 300 ¶ 5). As of June 10, 2020, Heffler
 8 “received 2,408 Notices returned by the USPS as undeliverable as addressed. Heffler ran
 9 2,336 undeliverable records through an address trace process. The address-tracing
 10 produced 1,923 updated addresses. Heffler [] re-mailed Notices to the 1,923 updated
 11 addresses obtained from the trace process. Following the re-mail, 447 Notices [were]
 12 returned by the USPS as undeliverable a second time.” (*Id.* ¶ 6).

13 **d. Opt-Outs and Objections to Settlement**

14 The Notice informed the Hose Plaintiffs that they “had until April 7, 2020, to submit
 15 a Claim Form, object to the Settlement, request to be excluded from (opt-out of) the
 16 Settlement, and dispute Defendants’ workweek records.” (Rapazzini Decl., ECF No. 298-
 17 2 ¶ 4; *see* Notice, Ex. A, Rapazzini Decl., ECF No. 298-2 at 10-13). As of June 10, 2020,
 18 Heffler received 3,981 online claims through the settlement website and 1,996 timely
 19 paper claim forms, for a total of 5,977 timely claim forms. As of June 19, 2020, Heffler
 20 also received 108 claim forms that were postmarked after the claims filing deadline of
 21 April 7, 2020. (Rapazzini Supp. Decl., ECF No. 300 ¶ 8; ECF No. 303 at 2).

22 Heffler “received workweek disputes from nine (9) Hose Plaintiffs. Eight (8) of
 23 these individuals provided alternative workweek estimates, but none provided supporting
 24 documentation. Heffler reviewed all nine disputes after forwarding them to counsel for
 25 their comments. In each case, Heffler determined that the there was insufficient evidence
 26 to dispute workweek data previously submitted by Defendants.” (Rapazzini Decl., ECF
 27 No. 298-2 ¶ 12).

As of June 10, 2020, Heffler “ha[d] not received any requests for exclusion [] or objections.” (Rapazzini Supp. Decl., ECF No. 300 ¶ 9).

e. Notice and Administration Costs

The Settlement provides:

Subject to Court approval, the Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and calculation and distribution of payments, which barring unusual or unforeseen circumstances, is not estimated to exceed Two Hundred Thirty Five Thousand Dollars \$235,000 (the “Settlement Administration Costs”). The Parties agree that the Settlement Administrator has fairly and reasonably allocated Two Hundred Twenty Thousand (\$220,000) of these Settlement Administration Costs to the Hose Lawsuit . . . These Settlement Administration Costs[] [] will be paid from the respective Total Settlement Amounts

(Settlement, Ex. A, Konecky Decl., ECF No. 290-3 at 21).

Heffler’s estimated fees and costs for administering this settlement are \$220,370. This includes providing the mail and email notice to 14,676 opt-in Plaintiffs, performing the skip tracing and re mailing of notices returned as undeliverable, providing phone and website support, and processing claim forms It also includes [Heffler’s] projected costs for processing and mailing settlement awards, preparing and filing federal and state tax documentation, and maintaining the qualified settlement fund through December 2021 to manage all current and future payments.

(Rapazzini Decl., ECF No. 298-2 ¶ 14).

f. Attorneys’ Fees and Costs

Plaintiff Stallworth requests that the Court approve an award of attorneys’ fees of \$2,188,505.53 and litigation costs of \$684,387.95. Attorney Joshua G. Konecky states in his Declaration that “[t]he \$2,188,505.53 in attorneys’ fees is one-third (1/3) the Hose Total Settlement Amount, but less than one-half (1/2) of the actual[] attorneys’ fees incurred over the past five (5) years to effectively litigate this difficult and risk-laden[] case.” (Decl. of Joshua G. Konecky in Support of Mot. for Attorneys’ Fees (“Konecky Fees Decl.”), ECF No. 297-2 ¶ 2). Attorney Konecky states that “[a]s of February 28,

2020, [the law firm of Schneider Wallace Cottrell Konecky Wotkyns LLP] has invested approximately 8,500.74 hours of work into this case, for a total lodestar of approximately \$4,882,304 after removing all billing entries by individuals who recorded fewer than 10 hours on the case” (*Id.* ¶ 7). Attorney Konecky states that the requested fee award “would result in a ‘negative’ multiplier of approximately 0.44 of [the] lodestar. In addition, [the] total lodestar of \$4,882,304 does not include the work [the law firm] will do after completion of [the Motion for Attorneys’ Fees], such as working with the settlement administrator, preparing the motion for final approval, and communicating with the Opt-in Plaintiffs.” (*Id.* ¶ 8). “Plaintiffs’ Counsel also have incurred costs of suit of approximately of \$684,387.95 through February 26, 2020.” (*Id.* ¶ 82).

g. Incentive Award

Plaintiff Stallworth requests that the Court award approve service awards in the amount of \$20,000 to the estate of deceased Plaintiff Hose and \$5,000 to Plaintiff Stallworth “for their important contributions to the Collective in both the litigation and settlement of this matter.” (ECF No. 296-1 at 5).

III. FAIRNESS OF THE SETTLEMENT

Plaintiff Stallworth asserts that the Settlement is fair and reasonable. Plaintiff Stallworth asserts that the parties reached the Settlement after “a lengthy mediation and follow-up with a well-respected mediator experienced in the area of wage and hour collective action cases,” an in-person settlement meeting, and nine months of follow-up negotiations. (ECF No. 298-1 at 15-16). Plaintiff Stallworth asserts that the parties reached the Settlement “after substantial discovery, depositions and motion practice” by experienced legal counsel. (*Id.* at 16). Plaintiff Stallworth asserts that the absence of objections or exclusions to the Settlement is indicative of its fairness and value. Plaintiff Stallworth asserts that the \$6,565,516.59 recovery achieved in the Settlement “represents a strong result” in light of “the WIS bankruptcy, the motion to compel thousands of individual arbitrations, and the need to prove successor liability.” (*Id.* at 18).

1 “To guard against th[e] potential for class action abuse, Rule 23(e) of the Federal
2 Rules of Civil Procedure requires court approval of all class action settlements, which may
3 be granted only after a fairness hearing and a determination that the settlement taken as a
4 whole is fair, reasonable, and adequate.” *Jones v. GN Netcom, Inc. (In re Bluetooth Headset*
5 *Prods. Liab. Litig.)*, 654 F.3d 935, 946 (9th Cir. 2011) (citing Fed. R. Civ. P. 23(e)(2)).
6 The Court of Appeals for the Ninth Circuit has a “strong judicial policy” in support of class
7 action settlements. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).
8 However, when presented with a motion to finally approve a class action settlement,
9 “judges have the responsibility of ensuring fairness to all members of the class” *Staton*
10 *v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). Ultimately, “the court’s intrusion upon
11 what is otherwise a private consensual agreement negotiated between the parties to a
12 lawsuit must be limited to the extent necessary to reach a reasoned judgment that the
13 agreement is not the product of fraud or overreaching by, or collusion between, the
14 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and
15 adequate to all concerned.” *Officers for Justice v. Civil Serv. Comm’n of S.F.*, 688 F.2d
16 615, 625 (9th Cir. 1982).

17 Courts consider several factors in determining the fairness of a proposed settlement,
18 including:

19 the strength of plaintiffs’ case; the risk, expense, complexity, and likely
20 duration of further litigation; the risk of maintaining class action status
21 throughout the trial; the amount offered in settlement; the extent of discovery
22 completed, and the stage of the proceedings; the experience and views of
23 counsel; the presence of a governmental participant; and the reaction of the
24 class members to the proposed settlement.

25 *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (citation and internal
26 quotation marks omitted); *see Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th
27 Cir. 1993) (holding that only one factor was necessary to demonstrate that the district court
28 was acting within its discretion in approving the settlement).

1 The parties litigated this case for four years before negotiating the Settlement. The
2 parties investigated facts and claims; interviewed Hose Plaintiffs; propounded and
3 responded to written discovery; conducted depositions; litigated discovery disputes and
4 motions, including motions to dismiss, motions to compel arbitration, and motions for
5 summary judgment; prepared and filed more than 1000 demands for individual arbitration;
6 represented the Unsecured Creditor Committee in the WIS bankruptcy proceedings in the
7 Bankruptcy Court of the District of Delaware; and engaged in settlement negotiations. (*See*
8 Konecky Decl., ECF No. 290-2 ¶¶ 2-40).

9 Plaintiffs Hose and Stallworth faced significant challenges in litigating this case to
10 settlement. After 13,781 Opt-in Plaintiffs were compelled to individual arbitration, only
11 approximately 485 individuals remained in the action. Defendant WIS filed for Chapter 11
12 bankruptcy. Defendant WIS had approximately \$3.5 million in total assets to distribute to
13 its creditors in the bankruptcy and approximately \$250 million in creditor claims. (*Id.* ¶
14 59). Defendants RSW and CLP filed a Motion for Summary Judgment on successor
15 liability and maintain that they are not liable as successors to Defendant WIS.

16 The parties attended an in-person mediation and lengthy follow-up “with Jeffrey
17 Ross, Esq., an experienced employment and class action mediator.” (*Id.* ¶ 23; *see In re*
18 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 948 (explaining that participation of a
19 mediator is not dispositive but is “a factor weighing in favor of a finding of non-
20 collusiveness”)). The mediation allowed the parties to assess the strengths and weaknesses
21 of their claims and defenses, which laid the groundwork for the negotiations that followed
22 and ultimately resulted in the Settlement.

23 “[T]he Settlement recovery of \$6,565,516 is approximately 9.86% of the total
24 theoretical exposure of \$66 million that Plaintiffs originally asserted—approximately
25 9.24% even without the value of the Rabbi Trust claims that are scheduled to revert back
26 to settlement fund for the benefit of the Hose Plaintiffs in June 2021.” (Konecky Decl.,
27 ECF No. 290-2 ¶ 66). Every Hose Plaintiff will receive a minimum of \$50 in the
28 Settlement, even if they failed to submit a claim form. Following the anticipated deductions

1 of \$25,000 in service awards, \$2,188,505.53 in attorneys' fees, \$684,387.95 in litigation
 2 costs, and \$220,000 in administration costs, approximately \$3,447,624 remains as the Net
 3 Settlement Amount to be distributed to the Hose Plaintiffs, with none of the Net Settlement
 4 Amount to revert to Defendants.

5 As of June 19, 2020, Heffler received a total of 6,085 claim forms. Heffler received
 6 workweek disputes from only nine Hose Plaintiffs. None of the Hose Plaintiffs have
 7 objected to the Settlement or requested exclusion. *See Mandujano v. Basic Vegetable*
 8 *Prods., Inc.*, 541 F.2d 832, 837 (9th Cir. 1976) ("The opposition of a significant number
 9 of the members of the class to a proposed settlement is a factor to be considered when
 10 approving a settlement." (citations omitted)); *see also Boyd v. Bechtel Corp.*, 485 F. Supp.
 11 610, 624 (N.D. Cal. 1979) (finding "persuasive" the fact that 84% of the class filed no
 12 opposition); *Shames v. Hertz Corp.*, No. 07-CV-2174-MMA(WMC), 2012 U.S. Dist.
 13 LEXIS 158577, at *25-26 (S.D. Cal. Nov. 5, 2012) (explaining that the absence of a large
 14 number of objectors supports the fairness, reasonableness, and adequacy of the
 15 settlement). Given the lack of objection by the Hose Plaintiffs and the risk, expense,
 16 complexity, and duration of further litigation, the Court finds that the amount and terms
 17 of the proposed monetary benefits to the Hose Plaintiffs are fair and reasonable.

18 Plaintiffs' counsel has extensive experience litigating and settling complex wage and
 19 hour class and collective actions. (Konecky Decl., ECF No. 290-2 ¶¶ 42, 72; *see generally*
 20 Firm Profile, Ex. 3, Konecky Decl., ECF No. 290-5). Plaintiffs' attorneys have a strong
 21 understanding of this case from litigating for over four years and from prior experience in
 22 similar cases. Plaintiffs' attorneys are well qualified to conduct this litigation and to assess
 23 its settlement value. The Court finds that the Hose Plaintiffs have been fairly and
 24 adequately represented during settlement negotiations. The Court finds that the Settlement
 25 is fundamentally "fair, adequate and reasonable" and that no evidence of collusion exists.
 26 Fed. R. Civ. P. 23(e).

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1 IV. ATTORNEYS' FEES AND COSTS

2 Plaintiff Stallworth request that the Court award \$2,188,505 in attorneys' fees,
3 \$684,387.95 in litigation costs, and \$220,370 in administrative costs.

4 a. Attorneys' Fees

5 Plaintiff Stallworth requests that the Court award \$2,188,505 in attorneys' fees. Rule
6 23(h) of the Federal Rules of Civil Procedure provides that, "[i]n a certified class action,
7 the court may award reasonable attorneys' fees and nontaxable costs that are authorized by
8 law or by the parties' agreement." Fed. R. Civ. P. 23(h). Pursuant to the FLSA, when
9 judgment is entered in a plaintiff's favor, the plaintiff may recover reasonable attorney's
10 fees and costs of the action. *See* 29 U.S.C. § 216(b). The Settlement provides:

11 Hose Counsel will seek an award of attorneys' fees of not more than one-
12 third (1/3) of the Hose Total Settlement Amount, or two million, one hundred
13 and eighty-eight thousand, five hundred and five dollars and fifty-three cents
14 (\$2,188,505.53), plus reasonable litigation costs (including any expert costs),
15 currently estimated to be six hundred, sixty-four thousand, four hundred and
16 fifty two dollars and sixty three cents (\$664,452.63) All Attorneys' Fees
17 and Costs will be paid from the Gross Settlement Amount If the
applicable Court reduces the requested attorneys' fees, costs and expenses,
any such reduction will be applied to the respective Net Settlement
Amount(s).

18 (Settlement, Ex. A, Konecky Decl., ECF No. 290-3 at 19-20).

19 "Where a settlement produces a common fund for the benefit of the entire class,
20 courts have discretion to employ either the lodestar method or the percentage-of-recovery
21 method." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 942. Under the
22 percentage-of-recovery method, "courts typically calculate 25% of the fund as the
23 'benchmark' for a reason-able fee award, providing adequate explanation in the record of
24 any 'special circumstances' justifying a departure." *Id.* (quoting *Six (6) Mexican Workers*
25 *v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Paul, Johnson, Alston &*
26 *Hunt v. Graulity*, 886 F.2d 268, 272 (9th Cir. 1989)).

1 “The lodestar figure is calculated by multiplying the number of hours the prevailing
2 party reasonably expended on the litigation (as supported by adequate documentation) by
3 a reason-able hourly rate for the region and for the experience of the lawyer.” *Id.* at 941
4 (citing *Staton*, 327 F.3d at 965). After computing the lodestar figure, the district court may
5 then adjust the figure upward or downward taking into consideration twelve
6 “reasonableness” factors: (1) the time and labor required; (2) the novelty and difficulty of
7 the questions involved; (3) the skill requisite to perform the legal service properly; (4) the
8 preclusion of other employment by the attorney due to acceptance of the case; (5) the
9 customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by
10 the client or the circumstances; (8) the amount involved and the results obtained; (9) the
11 experience, reputation, and ability of the attorneys; (10) the “undesirability” of the case;
12 (11) the nature and length of the professional relationship with the client; and (12) awards
13 in similar cases. *Morales v. City of San Rafael*, 96 F.3d 359, 363 n. 8 (9th Cir. 1996). “The
14 party seeking an award of fees should submit evidence supporting the hours worked and
15 rates claimed.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983), *superseded on other*
16 *grounds by the Prison Litigation Reform Act*. However, trial courts may use “rough”
17 estimations, so long as they apply the correct standard. *Fox v. Vice*, 563 U.S. 826, 838
18 (2011).

19 In this case, Plaintiffs’ counsel submitted the 2019 billing rates for fourteen attorneys
20 and twenty law clerks and paralegals from Schneider Wallace Cottrell Konecky Wotkyns
21 LLP who worked more than ten hours on this case. Three attorneys from the law firm
22 served as the lead counsel in this action. Joshua G. Konecky is a partner with 24 years’
23 experience and an hourly rate of \$925.00. Leslie H. Joyner is an eleventh-year associate
24 with an hourly rate of \$800. Nathan B. Piller is a sixth-year associate with an hourly rate
25 of \$680. The hourly rates of other associate and staff attorneys on this case range from
26 \$500 to \$680 per hour. (*See Konecky Fees Decl.*, ECF No. 297-2 ¶ 81 (\$680/hour for
27 associate attorneys Scott Gordon (a third-year attorney) and Abigail Laudick (a first-year
28 attorney) and staff attorney Moises Jrade (a twenty-fourth-year attorney); \$675/hour for

1 associate attorney Nicole Coon (an eighth-year attorney); \$600/hour for staff attorneys
 2 Ryan Bonner (a fifth-year attorney), John Gaudette (an eighth-year attorney), and
 3 Benjamin Reumke (a ninth-year attorney); \$550/hour for staff attorneys Justin Schultz (a
 4 fourth-year attorney) and Melissa Ruffalow (a fourth-year attorney); \$500/hour for
 5 associate attorney Michael Hart (a fourth-year attorney) and staff attorney Krishna Desai
 6 (a third-year attorney)). Paralegal and law clerk billing rates range from \$150 per hour to
 7 \$350 per hour.

8 Plaintiffs' counsel submitted evidence that their rates have been approved in the past
 9 by numerous courts in the Northern District of California. (*See id.* ¶¶ 70, 71). The requested
 10 rates are slightly high for the Southern District of California. *See Hunter v. Nature's Way*
 11 *Prods., LLC*, No. 3:16-cv-532-WQH-AGS, 2020 U.S. Dist. LEXIS 1706, at *22 (S.D. Cal.
 12 Jan. 6, 2020) (finding hourly rates ranging from \$500 to \$750 reasonable); *Obesity*
 13 *Research Inst., LLC v. Fiber Research Int'l, LLC*, No. 15-cv-595-BAS-MDD, 2016 U.S.
 14 Dist. LEXIS 52463, at *8 (S.D. Cal. Apr. 18, 2016) (finding hourly rates of \$400 for a
 15 sixth-year associate and \$725 for a thirty-fifth-year partner reasonable); *Makaeff v. Trump*
 16 *Univ., LLC*, No. 10cv1940 GPC (WVG), 2015 U.S. Dist. LEXIS 46749, at *17 (S.D. Cal.
 17 Apr. 9, 2015) (finding hourly rates ranging from \$250 to \$825 reasonable).

18 Plaintiffs' counsel submitted a summary of hours worked for each attorney,
 19 paralegal, or law clerk who worked more than ten hours on this case. In total, the law firm
 20 expended 8,500.74 hours on this case, for a total lodestar of \$4,882,304. The requested
 21 \$2,188,505.53 in attorneys' fees represents 33% of the Hose Total Settlement Amount and
 22 44% of the lodestar. Although the billing rates are comparably high for the Southern
 23 District of California, the requested total fee award represents less than half of the fees
 24 actually incurred. No class member has objected to the requested attorney fee award.
 25 Courts in this circuit have routinely authorized awards representing a similar reduction in
 26 the lodestar. *See, e.g., Shames*, 2012 U.S. Dist. LEXIS 158577, at *64 ("Plaintiffs'
 27 \$5,123,336.00 fee request is reasonable, as it represents a 20% reduction of the lodestar.");
 28 *Stuart v. RadioShack Corp.*, No. C-07-4499-EMC, 2010 U.S. Dist. LEXIS 92067, at *18

(N.D. Cal. Aug. 9, 2010) (finding 33% fee award “well within the range of percentages which courts have upheld as reasonable in other class action lawsuits”); *Rippee v. Bos. Mkt. Corp.*, No. 05cv1359 BTM (JMA), 2006 U.S. Dist. LEXIS 101136, at *11 (S.D. Cal. Oct. 10, 2006) (award of 40% of \$3,750,000 wage and hour class action settlement).

Upon consideration of the Declarations and filings submitted by Plaintiffs’ counsel, the attorneys’ experience, the difficulty and uncertainty of this case, and other rates approved in this district, the Court finds that the requested fees are reasonable. The Court approves the award of attorneys’ fees in the amount of \$2,188,505.53.

b. Litigation Costs

Plaintiff Stallworth requests that the Court award \$684,387.95 in litigation costs. Class counsel is entitled to reimbursement of the out-of-pocket costs they reasonably incurred investigating and prosecuting this case. *See Staton*, 327 F.3d at 974. Plaintiffs’ counsel has expended \$684,387.95 in un-reimbursed expenses through February 26, 2020. Plaintiffs’ counsel has provided a ledger identifying each individual charge, which include “costs related to depositions, travel, [and] mediation[;] filing and service fees[;] . . . over \$211,000 in mailing and administration costs for the FLSA notice and opt in process; nearly \$70,000 in costs to establish the Wis.claims website portal . . .; over \$100,000 in eDiscovery fees . . .; and over \$70,000 in expert fees.” (Konecky Fees Decl., ECF No. 297-2 ¶ 83; *see generally* Ex. 3, Konecky Fees Decl., ECF No. 297-2 at 52-68). No class member has objected to the request for reimbursement of \$684,387.95 in costs. The Court finds that Plaintiffs’ counsel’s out-of-pocket costs were reasonably incurred in connection with the prosecution of this litigation, were advanced for the benefit of the class, and shall be reimbursed in full in the amount requested. The Court approves the request for litigation costs and expenses in the amount of \$684,387.95.

c. Administrative Costs

Plaintiff Stallworth requests that the Court award \$220,370 in administrative costs to Heffler, the appointed administrator. The Settlement provides:

Subject to Court approval, the Settlement Administrator will be paid for the

1 reasonable costs of administration of the Settlement and calculation and
 2 distribution of payments, which barring unusual or unforeseen
 3 circumstances, is not estimated to exceed Two Hundred Thirty Five
 4 Thousand Dollars \$235,000 (the “Settlement Administration Costs”). The
 5 Parties agree that the Settlement Administrator has fairly and reasonably
 6 allocated Two Hundred Twenty Thousand (\$220,000) of these Settlement
 7 Administration Costs to the Hose Lawsuit These Settlement
 8 Administration Costs[] [] will be paid from the respective Total Settlement
 9 Amounts

10 (Settlement, Ex. A, Konecky Decl., ECF No. 290-3 at 21). Mark Rapazzini, the Senior
 11 Director at Heffler, states in his Declaration:

12 Heffler’s estimated fees and costs for administering this settlement are
 13 \$220,370. This includes providing the mail and email notice to 14,676 opt-in
 14 Plaintiffs, performing the skip tracing and remailing of notices returned as
 15 undeliverable, providing phone and website support, and processing claim
 16 forms It also includes [Heffler’s] projected costs for processing and
 17 mailing settlement awards, preparing and filing federal and state tax
 18 documentation, and maintaining the qualified settlement fund through
 19 December 2021 to manage all current and future payments.

20 (Rapazzini Decl., ECF No. 298-2 ¶ 14). Courts regularly award administrative costs
 21 associated with providing notice to the class. *See, e.g., Odrick v. UnionBanCal Corp.*, No.
 22 C 10-5565 SBA, 2012 U.S. Dist. LEXIS 171413, at *17-18 (N.D. Cal. Dec. 3, 2012).
 23 However, Plaintiff Stallworth fails to provide evidence that an award of \$370 above the
 24 \$220,000 negotiated in the Settlement is warranted. The Court approves an award of
 25 administrative costs in the amount of \$220,000.

26 **V. INCENTIVE AWARD**

27 Plaintiff Stallworth requests that the Court approve service awards in the amounts
 28 of \$20,000 to the estate of deceased Plaintiff Richard Hose and \$5,000 to Plaintiff Eve
 Stallworth. Incentive awards are “fairly typical” discretionary awards “intended to
 compensate class representatives for work done on behalf of the class, to make up for
 financial or reputational risk undertaken in bringing the action, and, sometimes, to
 recognize their willingness to act as a private attorney general.” *Rodriguez v. W. Publ’g*

1 *Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (emphasis omitted) (citations omitted). In
 2 assessing the reasonableness of an incentive award, several district courts in the Ninth
 3 Circuit have applied the five-factor test set forth in *Van Vranken v. Atl. Richfield Co.*, 901
 4 F. Supp. 294 (N.D. Cal. 1995), which analyzes (1) risk to the class representative in
 5 commencing a class action, both financial and otherwise; (2) the notoriety and personal
 6 difficulties encountered by the class representative; (3) the amount of time and effort spent
 7 by the class representative; (4) the duration of the litigation; (5) the personal benefit, or
 8 lack thereof, enjoyed by the class representative as a result of the litigation. *See, e.g., Miller*
 9 *v. Wise Co.*, ED CV17-00616 JAK (PLAx), 2020 U.S. Dist. LEXIS 40032, at *37 (C.D.
 10 Cal. Feb. 11, 2020); *Hunter*, 2020 U.S. Dist. LEXIS 1706, at *25-26; *Rodriguez v. Penske*
 11 *Logistics, LLC*, No. 2:14-cv-02061-KJM-CKD, 2019 U.S. Dist. LEXIS 9441, at *39 (E.D.
 12 Cal. Jan. 17, 2019); *Vietnam Veterans of Am. v. CIA*, No. 09-cv-00037-CW, 2018 U.S.
 13 Dist. LEXIS 172135, at *3-4 (N.D. Cal. Oct. 4, 2018).

14 In this case, Plaintiff Hose provided information during lengthy interviews,
 15 responded to extensive written discovery, provided hundreds of pages of documents, and
 16 assisted counsel in preparing for depositions and seeking discovery. (Decl. of Joshua G.
 17 Konecky in Support of Mot. for Service Awards, ECF No. 296-3 ¶¶ 4-29). Plaintiff Hose
 18 prepared for and sat for his deposition, which required him to travel from Texas to
 19 California. (*Id.* ¶ 12). Plaintiff Hose assisted in preparing and evaluating the case for
 20 mediation and traveled from Texas to California to attend the mediation. (*Id.* ¶ 17). Plaintiff
 21 Hose further agreed to petition the United States Trustee to establish a Committee of
 22 Unsecured Creditors and protect Hose Plaintiffs in the bankruptcy proceedings, ultimately
 23 leading to settlement of this case. (*Id.* ¶¶ 20-23).

24 Plaintiff Stallworth provided information during lengthy interviews, responded to
 25 extensive written discovery, and produced 771 pages of documents. (Decl. of Eve
 26 Stallworth, ECF No. 296-2 ¶¶ 4, 11-12). Plaintiff Stallworth travelled to Atlanta to prepare
 27 for and sit for her deposition and provided information to Plaintiffs' counsel about the sale
 28

1 of WIS, which led to the filing of the TAC. (*Id.* ¶ 12). Both Plaintiffs took risks in suing
 2 their former or current employer and participated in the case for four to five years.

3 The Plaintiffs have protected the interests of the class members and have participated
 4 in all aspects of the case. The Hose Plaintiffs have benefitted from these actions by
 5 receiving a settlement. No class member has objected to an incentive award of \$20,000 for
 6 Plaintiff Hose and \$5,000 for Plaintiff Stallworth. The proposed awards combined
 7 represent less than 0.4% of the Hose Total Settlement Amount. The incentive awards are
 8 within the acceptable range of approval and do not appear to be the result of collusion. *See,*
 9 *e.g., Van Vranken*, 901 F. Supp. at 300 (approving an award of \$50,000 for the named
 10 plaintiff); *Williams v. Costco Wholesale Corp.*, No. 02cv2003 IEG (AJB), 2010 U.S. Dist.
 11 LEXIS 67731, at *20 (S.D. Cal. Jul. 7, 2010) (approving a \$5,000 award to a class
 12 representative in an antitrust case settling for \$440,000). The Court finds that the requested
 13 incentive awards are reasonable.

14 **VI. CONCLUSION**

15 Having received and considered the proposed Settlement, the supporting papers filed
 16 by the parties, and the evidence and argument received by the Court, the Court grants final
 17 approval of the Settlement. The Court HEREBY ORDERS AND MAKES THE
 18 FOLLOWING DETERMINATIONS:

19 1. The parties litigated this case for more than five years before reaching the
 20 proposed collective action Settlement currently before the Court. During the litigation, the
 21 Court became very familiar with the claims, defenses, competing facts, and legal theories
 22 presented by the parties, as well as the work of counsel in presenting them. Among other
 23 things, the Court considered and decided three complex Motions to Compel Arbitration
 24 (involving supplemental briefing and a hearing), a Motion for Conditional Certification, a
 25 Motion for Summary Judgment, several Motions to Compel Discovery, and a Motion for
 26 Relief concerning the filing fees that would be assessed in arbitration. These motions
 27 presented complex and difficult issues. They also evidenced that the parties conducted
 28

1 extensive discovery, depositions, and investigation to support and vet their positions
2 during the case.

3 2. With this history, the Court has now considered Plaintiffs' Motion for Final
4 Approval of Collective Action Settlement, which weighs the strength of the case; the risk,
5 expense, complexity, and likely duration of further litigation; the risk of maintaining
6 collective action status throughout the trial; the amount offered in settlement; and the
7 extent of discovery completed, among other factors. The Court concludes based on these
8 factors, as well as the terms of the Settlement itself and the history of the lengthy arms-
9 length negotiations that resulted in an agreement of these terms, that the Settlement is
10 "fair, adequate, and reasonable." *Staton*, 327 F.3d at 959.

11 3. The Court finds that due and proper notice of the Settlement was provided to
12 all members of the collective, including notice of the right to object to the proposed
13 Settlement, the right to object to class counsel's Motion for Attorneys' Fees and Costs,
14 the right to appear in person or by counsel at the final approval hearing and be heard, and
15 the right to opt-out of the Settlement. The Court finds that the notice provided was the best
16 means of providing notice to the members of the collective under the circumstances. The
17 Court further finds that it was due and sufficient notice of the Settlement and the final
18 approval hearing to all persons affected by and/or entitled to participate in the Settlement
19 or the final approval hearing, in full compliance with the requirements of due process.

20 4. The Court further finds that the Settlement is fair and reasonable, given the
21 substantial benefits to the settlement class provided by the non-reversionary, \$6,565,516
22 payment, and the risks associated with continued litigation.

23 5. The Court finds that no class member has objected to the Settlement or the
24 Motion for Attorneys' Fees and Costs.

25 6. The Court finds that no class member has requested to opt-out of the
26 Settlement.

1 7. The Court finds that the award of \$2,188,505.53 in attorneys' fees and
2 \$684,387.95 in costs is fair, reasonable, and appropriate, and approves the service awards
3 of \$5,000 to Plaintiff Eve Stallworth and \$20,000 to the estate of Plaintiff Richard Hose).

4 8. The Court approves payment to the settlement administrator, Heffler Claims
5 Group LLC, of \$220,000 based on the declaration of Mark Rapazzini verifying the
6 administrator's reasonable costs in fulfilling the settlement administration in this case.

7 9. The Court finds that the terms of the Settlement are fair, reasonable, and
8 adequate; the Court hereby approves them on a final basis. Specifically, the Court
9 approves in full the Settlement attached as Exhibit 1 to the Declaration of Joshua Konecky
10 in Support of the Motion for Preliminary Approval (ECF No. 290-3). The parties shall
11 comply with and implement the Settlement according to its terms.

12 10. Pursuant to the parties' stipulation, the 108 Opt-in Plaintiffs who have
13 submitted late claims as of June 19, 2020, as well as any additional Opt-in Plaintiffs who
14 submit late claim forms prior to two weeks before the date of the first distribution, shall
15 be included as Hose Participating Plaintiffs to receive their proportionate share of the Hose
16 Individual Settlement Payments from the first distribution, provided that they meet the
17 definitional criteria of "Hose Plaintiffs" set forth in the Settlement.

18 11. The Court will separately enter a judgment and dismissal of this action,
19 consistent with the terms of this Order.

20 Dated: July 2, 2020

21 *William Q. Hayes*
22 Hon. William Q. Hayes
23 United States District Court
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